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# Federation for the Abolition of the State...

Memorial ... Right Hon. Lord George Hamilton

[Westminster]

[1897]

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# MEMORIAL

## *Addressed to the Right Honourable Lord George Hamilton, Her Majesty's Secretary of State for India,*

By the British Committee of the Federation for the Abolition of the State Regulation of Vice.

17, Tothill Street, Westminster, London, S.W.,
*April 15th*, 1897.

My Lord,

On behalf of the British Committee of the Federation for the Abolition of State Regulation of Vice, the undersigned respectfully places before you the following considerations in reference to your Despatch of the 26th of March last "to the Government of India regarding the measures to be adopted for checking the spread of Venereal Disease among the Troops in India."

We desire, in the first place, to express our hearty concurrence in the measures you have suggested for dealing with the root of the evil by lessening the temptations to vice which beset our Indian Army. We believe that in this, and cognate directions will be found the most effective remedies for the deplorable state of things at present existing.

On the other hand, we note with deep regret that in paragraph 11 you give instructions for dealing with disease by a measure so exceptional and so fraught with moral risk that it has to be introduced as "*subject to*" certain "*restrictions*," each of which is conclusive evidence of the inherent tendency of that measure to develop grossly debasing administrative practices.

These instructions are that "subject to these restrictions" "Rules 5, 6 and 7 of the Cantonment Rules made in 1895 under sections 26 and 27 of the Cantonment Act of 1889, should be made applicable not merely to 'cholera, small-pox, diphtheria, or typhoid fever' as specified in the Rules, but to all contagious and infectious diseases, including venereal diseases."

We venture to remind you that your suggestion, so far from being new, was discussed between the Indian Government and your two predecessors in office in 1895, and decisively rejected by both the latter for reasons which can only be adequately understood in their historical connection, to which we respectfully ask your attention.

In 1886 the "Contagious Diseases Acts, 1866 to 1869," which regulated prostitution in this country, were repealed. It was held by the Government of the day (and we may say by every successive Government, whether Conservative or Liberal), that such repeal must carry with it the abolition of similar enactments in the Crown Colonies. There was, however, some hesitation on the part of the Indian Government in accepting this opinion as applicable to India. But in 1888, when the shameless provisions and administration of the Indian Cantonments Act (III. of 1880) could no longer be denied, the House of Commons passed the following Resolution without a single adverse vote, viz.:—

"That, in the opinion of this House, any mere suspension of measures for the compulsory "examination of women and for licensing and regulating prostitution in India is insufficient, and the "legislation which enjoins, authorises or permits such measures ought to be repealed."

Lord Cross, the Indian Secretary, immediately took steps to give effect to this resolution, and on the 15th October, 1888, the Indian Government informed him that "The Indian Contagious Diseases Act, and "Acts or portions of Acts connected therewith have been repealed, and that the residence of prostitutes "within regimental limits, or their accompanying troops to camps, or on the line of march, has been "forbidden, also that all circulars relating thereto have been cancelled; while pending the approval of the "revised Cantonment Rules framed under the new Bill (whereby venereal diseases will be treated on "precisely the same footing as other contagious or infectious diseases), all compulsory examination of "women, all registration of women, and granting of licences to practice prostitution, have been put a stop "to, and the hospitals in which prostitutes may be treated are to be worked as voluntary institutions."* Instructions to this effect had been sent by the Government of India "To the Quartermaster-General and to the Local Governments.† You will observe that the aim of the "new Bill" *was in every respect* the same as the measure which you now instruct the Indian Government to adopt, and that the restrictions imposed on the action of officials were practically the same as those in your despatch. The new Bill became the "Cantonment Act, 1889," Section 26 provided that "The Governor-General in Council may make rules "consistent with this Act for the prevention of the spread of infectious or contagious disorders within a "Cantonment, and for the appointment and regulation of hospitals and other places, within or without a "Cantonment, for the reception and treatment of persons suffering from any disease."

Such Rules were made accordingly in 1889, and came into force 5th July, 1890.‡ The only practical difference between these rules and those at present in force is that in the Rules of 1890 the regulations apply to "persons suffering" or "supposed to be suffering" from any infectious or contagious disorder; while those now in force are applicable only to "cholera, small-pox, "diphtheria, or typhoid fever."

We feel bound, at this point, to lay great stress on the fact that as soon as the Rules of 1889 were published in this country, Mr. (now Sir James) Stansfeld and Mr. Stuart entered a protest against them. The Honourable Lieutenant General Sir Henry Brackenbury spoke with reference to this protest in the Council of the Governor-General of India (24th January, 1895).

Sir Henry Brackenbury said§:—

"Now, I do not think it is necessary for me to read Rule 4, but what I must do is to point out "what were the terms of the protest of Messrs. Stansfeld and Stuart, Members of Parliament, against that "Rule. They said:—

> 'It seems to us that under this regulation a prostitute supposed to be diseased may be induced to enter the hospital under the threat of expulsion from the cantonment, and that

* Parliamentary Blue Book, C. 7148, 1893, p. 157.
† Blue Book 318, 1895, p. 95.
‡ Blue Book 318, 1895. p. 157.
§ *Ibid.*, pp. 95-97.

being once within its walls she may be kept prisoner there for an indefinite time and submitted to a personal examination under the same compulsion. Whilst, if she only leaves after the medical officer has pronounced her free from the disease, she may leave to resume her vocation within the cantonment upon the certificate of health and with the licence of the authorities. We submit to your Lordship that, if our interpretation of the proposed new regulations is correct, they may be used to set up again a system of compulsory examination of prostitutes, and to regulate and licence within the cantonment the calling of those prostitutes who submit to periodical examination and to certify and license those who are pronounced to be physically fit.' "

"The Secretary of State in the most loyal manner then stood up for the Government of India, and said:—

'The Secretary of State can see nothing in the Rules to lend any colour to such an insinuation, and he is unwilling to attribute to the Government of India an intention to evade or to allow any of its officers to evade the explicit instructions which he has issued, unless some solid ground can be afforded for such an accusation.'

"In this instance the Secretary of State stood loyally up for us, and declined to admit for a single "moment that it could be our intention to do anything contrary to his instructions or to the Resolution of the "House of Commons. We ourselves wrote to the Secretary of State reminding him that under Rule 4: —

'Any examination necessary to this end would be made only with the express consent of the person supposed to be suffering from infectious or contagious disease, and that if such person were unwilling to enter hospital he or she would be at liberty to quit the cantonment, and by so doing to escape the necessity of submitting to medical examination or treatment.'

"You will see the importance of Messrs. Stuart and Stansfeld's protest with reference to what I "shall bring out directly. The Government of India now abolished separate lock hospitals, and established "cantonment general hospitals for the treatment of persons in cantonments of both sexes, and for the "treatment of all diseases. They laid it down that 'the cantonment hospitals are intended for men and "women, indoor and outdoor patients, and for sickness of all kinds. They are not confined to infectious "and contagious diseases only.' And they sent instructions to the Commander-in-Chief:—

'That venereal disease is not to be treated by station or regimental authorities in any way differently from any other contagious disease. That on a medical authority certifying that a person is suffering, or supposed by such medical officer to be suffering, from a contagious disease, that person has the option of either (i.) going to hospital or (ii.) leaving the cantonment; but (iii.) such a person cannot be compulsorily sent to hospital. That prostitutes are not allowed to reside in regimental bazars, or to accompany regiments on the march. That no separate register or list of prostitutes is allowed to be kept in station bazars or any special examination of them to be permitted other than would take place in the case of any other contagious disease; nor any other action tending to convey the idea that they are in any way licensed or countenanced by Government.' "

Further on General Brackenbury quoted from the Report of a Commission appointed by the Indian Government in 1893, that notwithstanding these stringent restrictions, "Periodical examinations of all the "women in cantonments have been held until recently at both Meerut and Lucknow; and at the former "place the Rules of July, 1890, have been used to enforce attendance at examination, on penalty of being "compelled to leave cantonments." He said, "I invite special attention to this last sentence, because it "shows that the exact thing had come about which Messrs. Stansfeld and Stuart, in their letter to the "Secretary of State, had anticipated would come to pass. The Report continued:—

'At the latter place (Lucknow) the attendance seems to have been purely voluntary, 'save in so far as it may have been affected by traditions of the former system; but 'the women newly coming into cantonments have been examined by the doctor, under a 'procedure, which to them amounted to an order of the Cantonment Magistrate.' "

It will be seen from these extracts from General Brackenbury's speech which we have felt sufficiently important to give at length, that the prediction of Messrs. Stansfeld and Stuart was verified, and that the examination was in effect compulsory. Thus had the Resolution of the House of Commons, which undoubtedly re-echoed the views of the nation, been completely contravened under Rules framed to carry it out, but which became the instrument of such contravention, although such Rules gave the merest minimum of authority or power.

How this came about was clearly explained before the Departmental Committee of 1893, by Mr. Denzil Ibbetson, member of the above-named Commission, who, with Surgeon-Colonel Cleghorn, was deputed by the Indian Government to be its representative witness before the Departmental Committee of 1893. He indicated that the objectionable practices were "not in contravention of the Rules [of 1890] "because the Rules merely authorise certain courses of action, and do not prescribe or prohibit any. "The action would be illegal in the sense of being *ultra vires* and beyond the law, but I do not think it "would be illegal in the sense of being contrary to the law." "There is nothing in the Rules to prohibit it "[*i.e.* the *old* system carried on under the *old* Cantonments Act] or any other system."* "They are "empowering Rules.' † This was evidently the view of Indian Officials generally. For the Quartermaster General having issued a circular in which he asked to be informed "Whether the Cantonments Acts and Rules "approved by the Secretary of State have been exceeded? Whether 'official purveying' exists? Whether "unauthorised compulsion exists?" the replies from all the districts were in the negative. ‡ though, as is now fully admitted by the Indian Government, the practices so denied were extensively carried on, *ultra vires*. A remarkable instance of such *ultra vires* or extra-legal action being suggested by high authority as not only *permissible*, but as *required* by, law is furnished by a summary of those points in the Rules of 1890 on which "the Government of India desire particular stress to be laid." These were issued by the Quartermaster General on the 11th July, 1892, and include the following statement:—"(*b*) That any person becoming aware of, or "suspecting the existence of any contagious disease is bound (by law) to report it to the proper medical "authority," § although there was no such provision in the law or the Rules. For some reason (unexplained) a revised circular was issued omitting this clause, but in every other respect identical with the original. It was forwarded to the Secretary of State for India, 17th May, 1893. It appears to have had only a few months currency, but that was sufficient to initiate the practice, which it is evident was unlikely to cease on the withdrawal of the clause. It incontestably shows further, that a mere hint that such a practice would be

* Blue Book, C. 7148. Q. 2705-6. † *Ibid.*, Q. 2608. ‡ *Ibid.*, p. 180, *et seq.* § *Ibid.*, p. 200.

acceptable, would suffice to start and continue it, extra-legally, beyond or outside of, but not in contravention of the law.*

When (in 1893) the fact was fully established that the so-called voluntary system had been completely overridden by *extra-legal* practices, of which the provision placing, or interpreted to have placed, venereal diseases under the same Rule as "cholera, small-pox, diphtheria, or typhoid fever," became the fulcrum or pivot, Lord Kimberley, following the lines of his predecessor, Lord Cross, instructed the Government of India to proceed at once to make such alteration of the law and Rules as should prevent the recurrence of the scandal.† The Governor-General in Council passed an Act amending section 26, sub-section 21, of the "Cantonments Acts, 1889," by adding the following clause, viz.:—

"Provided that no such Rule shall contain any regulation enjoining or permitting any compulsory or "periodical examination of any woman by medical officers, or others, for the purpose of ascertaining whether "she is or is not suffering from any venereal disease, or is or is not fit for prostitution, or any regulation for "the licensing or special registration of prostitutes, or giving legal sanction to the practice of prostitution, in "any cantonment."

This new Act was passed on 8th February, 1895. The delay appears to have been caused by correspondence between Lord Kimberley and the Government of India, which, as well as the debate on the Bill in the Council of the Governor-General, indicates the extreme reluctance of the Indian Government to adopt the suggestions of the Secretary of State.‡ This showed itself especially in reference to Rule 5. It was drafted in India to apply to any person who "is, or is deemed to be suffering from *any infectious or "contagious disorder*." Lord Kimberley gave instructions to substitute the words "cholera, small-pox, "diphtheria or typhoid fever" for the words in italics, thus deliberately "excluding venereal disease from "the category of those infectious or contagious disorders." The Government of India remonstrated saying "this change in the Rules goes beyond the Resolution of the House of Commons, which was directed only "against the compulsory examination of women, and licensing and regulating of prostitution in India." Mr. (now Sir Henry) Fowler (who had succeeded Lord Kimberley) replied:—"The change was made "advisedly, because of the failure of the original Rules to ensure compliance with the orders of your "Government, and with the intentions of the House of Commons, and because the draft Rules submitted "[as above] would have been equally inefficacious, to secure the desired result." "I have now given my "best attention to the arguments contained in your letter; but I find myself, nevertheless, compelled to "concur in Lord Kimberley's opinion that no action which falls short of what he enjoined will be sufficient "for the purpose in view."

Believing that you are as loyally disposed as were your three predecessors in Office, to carry out the intention you express that there should be no compulsory examination or licensing or regulating of prostitution, we cannot but believe that you have overlooked the weighty historical facts, leading up to the conclusion of Lord Kimberley and Sir H. Fowler, or you would not now propose to restore a measure, which in the past was the one essential fulcrum of the extra-legal practices, by which that intention was so scandalously contravened. History conclusively proves that the regulations of 1890, which were practically identical with what you now propose, not only *permitted*, but *facilitated* the practices you condemn.

With regard to the placing of venereal diseases on the same footing as other contagious disorders in the manner proposed in your despatch, we respectfully submit that this is, in the nature of the case, impossible. In this relation we would direct your attention to the following considerations:—(1.) It casts no stigma on the name or character of a person to assert that he, or she, is affected with "cholera, small-pox, diphtheria or typhoid fever," and it can be ascertained whether such statement is true without shock to the feelings of the most refined. The opposite is the case with venereal disease, in regard to which a mis-statement is a virtual libel, and a compulsory examination is an indecent outrage. (2.) As regards the former classes of disease no conceivable measures can have any moral bearing; whereas in the latter class compulsory (and in some of its relations, even voluntary) submission to examination or treatment has the gravest moral consequences both to the individual and the community. (3.) The procedure under the Rules you propose is as follows:—The Medical Officer is informed by a soldier that a certain woman is diseased. Believing that, he orders her for examination at the hospital. She may be perfectly honourable or perfectly healthy. In either case if she refuses to attend she is held to be diseased and is expelled from the cantonment. We submit that the whole of this procedure, though it may be in words the same as in a case of cholera, is in fact utterly different in the means by which information is secured, in the nature of the evidence as to fact, and in the consequences to the woman who disputes the fact. The operation of the Rules, so far as venereal disease is concerned, is not general. In the Report of the Special Indian Commission appointed in 1893 by the Government of India to enquire into the working of the regulations,§ it is stated that so far as venereal disease is concerned the operation of the Rules is "practically confined by "sheer force of circumstances to women who are frequented by British soldiers. Even with regard to them "information is difficult to obtain, for a man often does not know, and still oftener will not tell, which woman "has diseased him." And the same Report farther says: "Except in the not infrequent cases where a "woman herself applies for medical aid, this (*i.e.*, information necessary to proceed upon) can only be obtained "from men who have been diseased by them." It is clear then that a man, as the result of an admittedly immoral act, becomes an informer, and in many cases a false informer, upon whose testimony the State has to rely for submitting the woman to the most degrading process. We submit that there is no parallel between venereal disease and cholera, either in the procedure here indicated, or in the effect of that procedure on moral conduct, or in the position in which it places the State.

We note the declaration that "Her Majesty's Government do not share the view" that "the "examination of women which may be held under these Rules, is, in effect, compulsory." We submit that the words "compulsory" and "voluntary" have a very definite meaning in British law and common usage. The Indian Officials, from the Viceroy downwards, have put their own interpretation upon those terms; an interpretation entirely at variance with British usage, but which Her Majesty's present Government appear to endorse.

We need hardly remind you that the straightforward usage of the term "voluntary" is: "Of "his or her own free will or accord," and it cannot be said to apply to any proceeding like those in the present Rules 5, 6, and 7, in which a disagreeable or disastrous expulsion is offered to a person as the only alternative to his or her doing what he or she would otherwise decline to do. If Her Majesty's Government did not wish to apply Rules 5, 6, and 7 to venereal diseases, we do not hesitate to say they would themselves describe and defend the provisions as being, and intended to be, compulsory. We

* Blue Book C. 7148, p. 206. † Blue Book, 318, 1895. ‡ *Ibid.* § Blue Book C. 7148, p. 251.

therefore maintain that the adoption of your suggestion by the Indian Government would be in itself (apart from any question as to the mode of working the Rules) the establishment of a compulsory system.

We must remark on the extreme gravity of your instruction:—"It is not clear to me that any "legislation will be required" to effect the proposed alteration of the Rules. "Should, however, Your "Excellency's Government be of a different opinion, the necessary legislation should, without delay, be "undertaken." If the proposed new Rules would not infringe the Amendment already cited of Section 26 of the Cantonments Act, 1889, nothing can be clearer than that no legislation will be needful. The doubt on your part seems to indicate that "it is not clear to" Her Majesty's Government whether the *adoption* of any alteration fulfilling the instruction would not be *in itself* such an infringement by the Governor-General in Council. For that Amendment prohibits, not certain things from being done under the Rules, but the making of Rules which would even *permit* such practices. Therefore your instruction amounts to an invitation to the Indian Government to repeal the Amendment, which they so reluctantly passed in 1895, if they think it stands in the way of the said alteration of Rules. In other words, you have already authorised them to remove *all* the barriers insisted on by your predecessors, and proved by the before-cited historical facts as necessary to prevent a return to any or all of the scandalous practices so universally condemned.

Coming now to a different standpoint, we ask you to enquire what would be the sum total of effect of the proposed measure in "Checking the spread of Venereal Disease in India." You are doubtless fully aware that it is regarded as ridiculously inadequate by those who are persistently urging upon you that something of this kind must be done. In support of their view, they could point to the fact that even under "Act XIV. of 1868" the most drastic proceedings (supported by severe penalties of imprisonment or fine or *both*) for the licensing of brothels and prostitutes and for compelling women to submit to examination, it was only possible to get hold of a very small number of the women practising prostitution. This is confirmed by many official papers. We need only refer you to one of the latest among those written while the Cantonment Regulations were in full force, confirming this fact and another of equal importance, that the soldiers preferred to consort with women who *evaded* the regulations. "The Thirteenth Annual Report of the working of the Lock Hospitals of the North-West Provinces and Oudh, for the year ending 31st December, 1886," contains reports from 14 districts or cantonments. Twelve complain of the men's consorting with unlicensed prostitutes, one does not mention the point, while the remaining report indirectly places the difficulty in the strongest light by pointing out the necessity of insuring that "attractive women are kept in the regimental *chakla*" or brothel. The following is an extract from the Report from Fyzabad, which more fully supports the same view. "The police are said to be constantly on the alert to "apprehend any unlicensed prostitute found within five miles of cantonments, and the regimental police "patrol the city to prevent soldiers straying into the houses of unregistered city prostitutes. Yet unlicensed "prostitution goes on as before. The fewness of the registered prostitutes, their advanced age and their "ugliness are given as the reasons which render them unpopular with the soldiers, and induce the latter to "cohabit with unlicensed and casual women. The reasons are no doubt sufficient; but it would probably be "found difficult to replace these women, as the medical officer proposes, by others who are younger and "better-looking." From this it is evident that the policy afterwards adopted by the Indian Government of seeking to provide "younger and better-looking women" was only the natural attempt to remedy the defect, in this drastic system, which was at once a cause and a proof of its failure. For the officials in these reports all but uniformly attribute the increase of disease to the men's consorting with "unlicensed" women. Testimony of the same kind, and of the impossibility of getting hold of these women, is frequent in official documents.

Those who are urging you to give the Indian Government power to deal with venereal disease are entitled to say—"If with the enormous powers of the Act of 1868, we could bring so few women under treatment, and could induce so few men to confine their attention to these, the measure now proposed is practically worthless except in so far as it is a first step in the return to more complete regulations." You are probably aware that they have already begun to take up this position.

While we are in entire accord with them as to the sanitary futility of the proposed measure, we must emphatically point out that its corrupting influence would be out of all proportion to the powers conferred. It would be a public declaration of a special interest taken by the Government in promoting the health and comfort of debauchees as such, and would therefore be an open encouragement of debasing and disease-producing vice. Its whole influence would be in a direction opposed to that of every effort to promote morality among the troops, and it would powerfully tend to paralyse those efforts.

We note with regret that your dispatch places disease in the forefront and gives a very subordinate place to moral considerations. Even the one paragraph (14) referring to moral efforts introduces these only in relation to mitigating or checking the spread of disease. We believe this attitude (which has been that of the Indian Government for many decades) is the main cause of the present condition of the Indian Army, and that without a total change in this respect that condition will become more and more disastrous.

We earnestly plead with you to look beyond the horrible statistics of disease to the still more terrible facts of which it is at once the index and the inevitable outcome. The figures reveal the startling facts that we have in India an army of 70,000 men all but given up to reckless debauchery, and that these return to this country at the rate of 13,000 annually, bringing with them the debasing sentiments and habits acquired during their Indian training, and infecting our industrial communities with a moral pestilence, more destructive of the national stamina than the disease on which you have concentrated your attention.

We submit that the only statesmanlike attitude—the only one that offers a hope of permanently lessening the deplorable physical effects of debauchery—is that of making well-devised, continuous, and resolute efforts to remove temptations to that debauchery, to apply disciplinary provisions and restraints to check disease and discourage vice, and to place the soldier in an environment tending to develop his best physical, moral, intellectual and religious faculties. We have recently issued a Memorandum, of which we hand you a copy, containing practical suggestions in this direction, which we commend to your most earnest consideration. We must again repeat that we entirely traverse your statement that statistics prove that "Regulation" has in any way been successful. And in view of the gravity of the situation, we again repeat our request that a Select Committee may be appointed to enquire as to what remedies may most wisely be adopted.

We therefore venture to hope that you will, on further consideration, withdraw your despatch, and substitute another inculcating a policy based on these more hopeful lines.

Signed on behalf of the Committee,

WALTER S. B. McLAREN,
*Chairman.*

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